

The 7th May, 1986

**No. 9/7/86-6Lab/3335.**—In pursuance of the provisions of Section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947) the Governor of Haryana is pleased to publish the following award of Presiding Officer, Labour Court, Rohtak in respect of the dispute between the workman and the management of Haryana Roadways, Sirsa.

BEFORE SHRI B.P. JINDAL, PRESIDING OFFICER, LABOUR COURT, ROHTAK

Reference No. 191 of 82

*Between*

SHRI NANAK CHAND, WORKMAN AND THE MANAGEMENT OF HARYANA ROADWAYS, SIRSA

Shri S.S. Gupta, A.R. for the workman.

Shri V.K. Kohli, Law Officer of the management.

#### AWARD

1. In exercise of the powers conferred by clause (c) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947, the Governor of Haryana, referred the following dispute between the workman Shri Nanak Chand and the management of M/s. Haryana Roadways Sirsa, to this Court, for adjudication,—vide Haryana Government Gazette Notification No. ID/HSR/53/82/43470, dated the 16th September, 1982 :—

Whether the termination of service of Shri Nanak Chand was justified and order ? If not, to what relief is he entitled ?

2. After receipt of the order of reference, notices were issue to the parties. The parties appeared. The case of the petitioner is that he was employed as a Helper for the last about three years but the respondent choose to terminate his services unlawfully with effect from 19th February, 1982 after holding a farce of an enquiry in which, he was not given an opportunity of participation. Furthermore, he has alleged that the punishment meted out to him is shockingly disproportionate to his alleged mis-conduct and as such he has alleged that his termination amounts to victimisation.

3. In the reply filed the respondent, preliminary objections taken are that the claim is pre-mature and not maintainable in the present form. On merits, it is alleged that the petitioner remained absent from duty from 19th March, 1981 to 27th March, 1981 without any intimation regarding which, a charge-sheet was served upon him and a reply was filed by the petitioner, which was not found satisfactory and thereafter a domestic probe was held, in which, the petitioner was given full opportunity of participation. The findings of the Enquiry Officer were against the petitioner and so, after affording opportunity for personal hearing order of termination was passed, which is legal and lawful.

4. On the pleadings of the parties, the following issues were settled for decision on 9th March, 1983 :—

- (1) Whether the management has conducted proper and fair enquiry ? If so, to what effect ?
- (2) Whether the termination of service of Shri Nanak Chand was justified and in order ? If not, to what relief is he entitled ?

5. The management examined MW-1 Shri Ramesh Chander, MW-2 Shri Balbir Singh, clerk and MW-3 Shri Prem Nath Store Purchase Officer, MW-4 Shri Shakti Chand, S.S.I. Haryana Roadways Kaithal. The workman appeared as his own witness as WW-1.

6. Learned Authorised Representatives of the parties heard.

#### Issue No. 1 :

7. To prove the validity of the enquiry proceedings, the management examined MW-1 Shri Ramesh Chander Clerk, who stated that the petitioner remained absent from duty without leave from 19th March, 1981 to 27th March, 1981 and that no application for leave was received and that regarding this absenteeism a charge sheet was issued to him, which was sent to him by registered post and reply was filed by the workman and the report of the Enquiry Officer is Ex. MW-4/2. MW-2 is Shri Balbir Singh, clerk, who, stated that he had given a report to the Works Manager regarding absence of the petitioner. MW-3 Shri Prem Nath is Store Purchase

Officer, who held the enquiry against the petitioner. He stated that he was appointed as Enquiry Officer by Shri S.K. Jaoshi, General Manager and copies of the enquiry proceedings are Ex. MW 1/2 and the petitioner was given full opportunity of producing his defence. MW-4 is Shri Shakti Chand, who stated that he remained posted as Head Technician in Sirsa Depot in the year 1979-80, where the petitioner was working as a Helper and that a domestic enquiry was held against the petitioner, in which his statement was also recorded.

8. In reply is the statement of the petitioner, who appeared as WW-1. He stated that he had applied for leave on 19th March, 1981, because his mother was indisposed and had handed over an application to the Chowkidar and when he returned on 28th March, 1981 he was not allowed to resume his duties.

9. A perusal of the enquiry proceedings copies of which have been placed on the file goes to show that the same are absolutely extraneous to the charge of absenteeism against the petitioner. So much so, the respondent has not placed on record even a copy of the charge-sheet issued or the reply filed by the petitioner. From the statement made by the petitioner before the Enquiry Officer, it is apparent that the petitioner remained absent from duty from 19th March, 1981 to 27th March, 1981 on account of illness of his mother. He also admitted his careless attitude towards the work. The enquiry report runs into about half hand written page and from the same it cannot be made out as to what were the charges against the petitioner. It has not given in the enquiry proceedings as to whether the petitioner was given any opportunity to produce his defence. So, the enquiry held in this case cannot be held to be fair and proper and as such this issue goes against the respondent.

#### Issue No. 2 :

10. Even if charge against the petitioner regarding his absence from duty without leave from 19th March, 1981 to 27th March, 1981 is held to be correct, even then in my opinion, penalty of dismissal awarded to him was shockingly disproportionate in relation to his alleged misconduct. The petitioner was very honest in stating that since his mother was indisposed, so, he remained absent from duty during these days. He further assured that in future he shall devote full attention to his work. Under these circumstances interference by this court under section 11-A of the Industrial Disputes Act, 1947 is called for. So the petitioner is ordered to be reinstated with continuity of service. On the question of back wages, is the petitioner does not deserve full back wages, because he seems to be have adopted a very cavalier attitude towards his work. So, he cannot be paid full wages for the period he remained out of employment, though the normal rule is to award full wages, in case, the order of termination is set aside by the Court but the Court can made a departure from the accepted rules under certain circumstances which exist in this case. So, taking into consideration the totality of circumstances, I award him wages for the back period to the extent of 25 per cent only. The reference is answered and returned accordingly. There is no order as to cost.

The 11th March, 1986.

B.P. JINDAL,

Presiding Officer,  
Labour Court, Rohtak.

Endorsement No. 191—82/528, dated the 4th April, 1986

Forwarded (four copies) to the Secretary to Government, Haryana, Labour and Employment Departments, Chandigarh as required under section 15 of the Industrial Disputes Act, 1947.

B. P. JINDAL,

Presiding Officer,  
Labour Court, Rohtak.

No. 9/7/86-6Lab./3340.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of Presiding Officer, Labour Court, Rohtak in respect of the dispute between the workman and the management of M/S Haryana Distillery, Industrial Area, Yamuna Nagar.

BEFORE SHRI B. P. JINDAL, PRESIDING OFFICER, LABOUR COURT, ROHTAK

Reference No. 93 of 1980

*between*

SHRI GURANDITTA MAL, WORKMAN AND THE MANAGMENT OF M/S HARYANA DISTILLARY,  
INDUSTRIAL AREA, YAMUNANAGAR.

Shri S. S. Bakshi, A.R. for the workman.

Shri R.L. Gupta, A.R. for the management.

## AWARD

1. In exercise of the powers conferred by clause (c) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947, the Governor of Haryana, referred the following dispute, between the workman Sh. Guranditta Mal and the management of M/s. Haryana Distillery, Industrial Area, Yamunanagar, to this Court, for adjudication,—vide Haryana Government Gazette Notification No. ID/YMN/86-80/22962, dated 5th May, 1980:—

Whether the termination of services of Shri Guranditta Mal was justified and in order? If not, to what relief is he entitled?

2. After receipt of the order of reference, notices were issued to the parties. The parties appeared. The case of the petitioner is that he was appointed as a Washing Supervisor on 8th July, 1968 and that on 4th October, 1970 his services were retrenched by way of retirement and at that time he was drawing a salary of Rs. 475. It is further alleged that on 13th October, 1977 he was re-employed for six months on wages of Rs. 400 p.m., which period was extended thereafter for one year and ultimately the management,—vide its order, dated 11th/14th May, 1979 extended his period of employment upto 30th April, 1980 but the management choose to restrain him from performing his duties w.e.f. 11th June, 1979 and in this way the respondent choose to terminate his services unlawfully and so, he has claimed reinstatement with all attendant benefits.

3. In the reply filed by the respondent, the claim of the workman has been, controverted in toto. Re-employment of the petitioner as alleged is admitted but it is averred that from 11th June, 1979 to 16th June, 1979 the petitioner was on sanctioned leave and on 17th June, 1979 was rest day being Sunday and from 18th June, 1979 the petitioner of his own stopped attending to his duties and so, the management waited for the petitioner upto 30th June, 1979, but when the petitioner did not turn up, the management was constrained to presume under clause 7(h) of the Certified Standing Orders that the petitioner has abandoned his employment of his own. On the basis of these allegations, it is alleged that since the petitioner has abandoned his employment of his own, his claim is not covered under section 2-A of the Industrial Disputes Act, 1947 (hereinafter referred to as the Act), and as such, this reference is bad in law. On merits, it is alleged that services of the petitioner were never retrenched but superannuated. Remaining reply runs on the same line and as such, I need not suffer repetition.

4. On the pleadings of the parties, the following issues were framed on 29th October, 1980:—

(1) Whether the workman abandoned his services by remaining absence w.e.f. 18th June, 1979 and as such lost his lien on the job and the management did not terminate his services on 11th June, 1979?

(2) Whether the termination of services of Shri Guranditta Mal was justified and in order? If not, to what relief is he entitled?

5. The management examined MW-1 Shri R.K. Sharma, Time Keeper, MW-2 Shri K.M. Agrawal, General Manager, MW-3 Shri Vijay Kumar Gupta, Labour Officer and the workman examined WW-1 Shri Karnail Singh, WW-2 Shri Rajesh Kumar and himself appeared as WW-3.

6. Learned Authorised Representatives of the parties heard.

7. This Court cannot go into the factum of abandonment of the employment by the petitioner because of the law laid down in 1984 (II) LLN 297 between Sita Ram Vishnu Shirodhkar and Administrator Government of Goa and others, 1981 Lab. I.C., 1110 between Firestone Tyre & Rubber Co. of India (P) Ltd. v/s. The workmen employed represented by Firestone Tyre Employment Employees Union, 1985 Lab. I.C., 480, Rajasthan State Road Transport Corporation and others v/s. The Judge Industrial Tribunal Rajasthan Jaipur and others. The law is settled that the Labour Court or the Tribunal cannot travel beyond the terms of reference and can decide the matters which are only incidental or auxiliary to the same. In the present case, the plea of the management through out has been that the petitioner, abandoned his employment of his own by absenting from his duties from 18th June, 1979 onwards because he applied for leave from 11th June, 1979 to 16th June, 1979 and 17th June, 1979 was rest day being Sunday. In a way, the petitioner was to resume his duties after availing of the sanctioned leave w.e.f. 18th June, 1979 but he absented from his duties thereafter and the management waiting for him upto 30th June, 1979 and struck off his name from the rolls of the workman. This has come in the statements of MW-1 Shri R.K. Sharma, Time Keeper, MW-2 Shri K.M. Agarwal, General Manager, and MW-3 Shri Vijay Kumar Gupta, Labour Officer of the respondent. This plea of abandonment was taken by the respondent even during conciliation proceedings also. Copy of the same is Ex. MW-3/2. In clause 7(h) of the Certified Standing Orders applicable to the respondent company a workman shall be deemed to have abandoned his employment, in case, he does not resume his duties within eight days of the expiry of permitted absence. After the arguments had been concluded by the learned Authorised Representative for the workman, the workman himself pleaded that his services were terminated, because he failed to oblige the management when they were indulging in nefarious activities. No such plea has been taken by the petitioner in the demand notice or in the

Claim Statement filed in the Court. So, any *mala fide* intention cannot be attributed to the management in that behalf. Under these circumstances, this Court cannot go into the question as to whether the workman abandoned his employment of his own or he was restrained from resuming his duties deliberately as the said plea is absolutely alien and divorced from the terms of reference, which are regarding justifiability or otherwise of the alleged termination of the petitioner. I regret to observe that in spite of observations made by this Court in many other awards rendered that the Labour Department, Government of Haryana should properly tailor the terms of reference in accordance with the pleas of the parties during conciliation proceedings, no leave has been taken by the concerned department to do so and in the process the sufferers are the poor working class.

8. Another point argued on behalf of the respondent was that the petitioner was re-employed for a specific period after he reached the age of superannuation and as such, even if it be held that services of the petitioner were terminated, the same cannot fall within the ambit of term "retrenchment" as defined in Section 2(oo) of the said Act. Authority on the point cited on behalf of the respondent was 1983 (II) LLJ, 8 between Binoy Kumar Chatterjee and Jugantar Ltd. and others. In this authority their Lordships of the Supreme Court observed and I quote :

"The age of superannuation marks the end point of workman's service. If he is employed afresh thereafter for a term, such employment cannot be regarded as employment contemplated within the definition of the expression "retrenchment". The termination of the employee's services on the expiry of the period of his contraction on 1st December, 1977 does not fall within the expression "retrenchment" in S. 2 (oo) of the Industrial Disputes Act.

9. So, on this ground also the petitioner must fail. On behalf of the petitioner reliance was placed on AIR 1978 S. C. page 8 between Delhi Cloth and General Mills Company Ltd. v/s Shambhu Nath Mukherji and others. In this authority their Lordships held that striking of the name of the workman from the rolls by the management is termination of his services and such termination of service is "retrenchment" within the meaning of section 2(oo) of the said Act. The facts of the authority under reference are absolutely different from the facts of the case in hand and as such, observations quoted above cannot come to the rescue of the petitioner.

10. In the light of the observations made above, issues framed in this case cannot be gone into, because this reference is bad in law in view of the authorities cited above and as such, the workman is not entitled to any relief. The reference is answered and returned accordingly with no orders as to cost.

Dated, the 7th March, 1986.

B. P. JINDAL,

Presiding Officer,  
Labour Court, Rohtak,  
Camp Court Sonapat.

Endst. No. 93-80/533, dated the 4th April, 1986

Forwarded (four copies) to the Secretary to Government, Haryana, Labour and Employment Departments, Chandigarh, as required under section 15 of the Industrial Disputes Act, 1947.

B. P. JINDAL,

Presiding Officer,  
Labour Court, Rohtak,  
Camp Court Sonapat.

The 12th May, 1986

No. 9/9/86-6Lab/3264.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of Presiding Officer, Industrial Tribunal, Faridabad in respect of the dispute between the workman and the management of M/s Ajanta Rubber v. Belt Uchani, G. T. Road, Karnal:—

BEFORE SHRI R. N. BATRA, PRESIDING OFFICER, INDUSTRIAL TRIBUNAL, HARYANA, FARIDABAD

Reference No. 496/1983

between

SHRI RAM CHANDER YADAV WORKMAN AND THE MANAGEMENT OF M/S AJANTA RUBBER V. BELT UCHANI, G. T. ROAD, KARNAL

Present:—

Shri Jang Bhadaur for the workman.  
Shri O. N. Vadera for the management.

## AWARD

In exercise of the powers conferred by clause (d) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947, the Governor of Haryana referred the following dispute between Shri Ram Chander Yadav, workman and the management of M/s. The Ajanta Rubber V. Belt Uchani, G. T. Road, Karnal to this Tribunal for adjudication:—

Whether the termination of services of Shri Ram Chander Yadav was justified and in order ? If not, to what relief is he entitled ?

2. Notices were issued to both the parties. It may be mentioned that on the last date of hearing Shri Jang Bahadur Yadav, representative of the claimant, stated that the claim of the claimant had already been satisfied and the claimant had relinquished his rights of reinstatement etc. and that no dispute was now left between the parties. In view of the testimony of Shri Jang Bahadur Yadav, representative of the claimant, the dispute has already been satisfied and the claimant has relinquished his right of reinstatement etc. The award is passed accordingly.

Dated, the 1st April, 1986.

R. N. BATRA,

Presiding Officer,  
Industrial Tribunal, Haryana,  
Faridabad.

Endst. No. 232, dated 1st April, 1986.

Forwarded (four copies) to the Financial Commissioner and Secretary to Government, Haryana, Labour and Employment Departments, Chandigarh as required under section 15 of the Industrial Disputes Act, 1947.

R. N. BATRA,

Presiding Officer,  
Industrial Tribunal, Haryana,  
Faridabad.

No. 9/9/86-6Lab./3265.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of Presiding Officer, Industrial Tribunal, Faridabad, in respect of the dispute between the workman and the management of M/s Ajanta Rubber V. Belt, Uchani, G. T. Road, Karnal :—

BEFORE SHRI R. N. BATRA, PRESIDING OFFICER, INDUSTRIAL TRIBUNAL, HARYANA, FARIDABAD

Reference No. 571/1983

between

SHRI CHANDERMA BHAGAT WORKMAN AND THE MANAGEMENT OF M/S AJANTA RUBBER V. BELT, UCHANI, G. T. ROAD, KARNAL

Present :—

Shri Jang Bahadur for the workman.

Shri O. N. Vadera for the management.

## AWARD

In exercise of the powers conferred by clause (d) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947, the Governor of Haryana referred the following dispute between Shri Chanderma Bhagat, workman and the management of M/s Ajanta Rubber V. Belt, Uchani, G. T. Road, Karnal, to this Tribunal for adjudication :—

Whether the termination of service of Shri Chanderma Bhagat was justified and in order? If not, to what relief is he entitled ?

2. Notices were issued to both the parties. It may be mentioned that on the last date of hearing, Shri Jang Bahadur Yadav, representative of the claimant, stated that the claim of the claimant had already been satisfied and the claimant had relinquished his right of reinstatement etc. and that no dispute was now left between the parties. In view of the testimony of Shri Jang Bahadur Yadav, representative of the claimant, the dispute has already been satisfied and the claimant has relinquished his right of reinstatement etc. The award is passed accordingly.

R. N. BATRA,

Dated, the 1st April, 1986.

Presiding Officer,  
Industrial Tribunal, Haryana,  
Faridabad.

Endorsement No. 233, dated the 1st April, 1986

Forwarded (four copies), to the Commissioner & Secretary to Government, Haryana, Labour & Employment Departments, Chandigarh, as required under section 15 of the Industrial Disputes Act, 1947.

R. N. BATRA

Presiding Officer,  
Industrial Tribunal, Haryana,  
Faridabad.

No. 9/9/86-6Lab./3266. -In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of Presiding Officer, Industrial Tribunal, Faridabad in respect of the dispute between the workman and the management of M/s The Ajanta Rubber v. Belt, Uchani, G. T. Road Karnal:--

BEFORE SHRI R. N. BATRA, PRESIDING OFFICER, INDUSTRIAL TRIBUNAL, HARYANA.  
FARIDABAD

Reference No. 572/1983

between

SHRI RAM ASREY, WORKMAN AND THE MANAGEMENT OF M/S. THE AJANTA  
RUBBER V. BELT, UCHANA ROAD, KARNAL

Present :—

Shri Jang Bahadur for the workman.

Shri O. N. Vadera for the management.

#### AWARD

In exercise of the powers conferred by clause (d) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947, the Governor of Haryana referred the following dispute between Shri Ram Asrey, workman and the management of M/s The Ajanta Rubber v. Belt Uchani, G.T., Road Karnal, to this Tribunal for adjudication:--

Whether the termination of services of Shri Ram Asrey, was justified and in order? If not, to what relief is he entitled?

Notices were issued to both the parties. It may be mentioned that on the last date of hearing, Shri Jang Bahadur Yadav representative of the claimant, stated that the claim of the claimant had already been satisfied and the claimant had relinquished his rights of reinstatement etc. and that no dispute was now left between the parties. In view of the testimony of Shri Jang Bahadur Yadav, representative of the claimant, the dispute has already been satisfied and the claimant has relinquished his rights of reinstatement etc. The award is passed accordingly.

Dated, the 1st April, 1986

R. N. BATRA,

Presiding Officer,  
Industrial Tribunal, Haryana, Faridabad.

Endst. No. 234, dated the 1st April, 1986.

Forwarded (four copies), to the Commissioner and Secretary to Government, Haryana, Labour and Employment Departments, Chandigarh, as required under section 15 of the Industrial Disputes Act 1947.

R. N. BATRA

Presiding Officer,  
Industrial Tribunal, Haryana, Faridabad.